

REMARKS

In response to the Office Action dated October 16, 2003, 2003 and Advisory Action dated April 9, 2004, claims 4, 9, 20, 22 and 24 are amended. Claims 2-12 and 20-26 are now active in this application. The amendments to claims 4, 9, 22 and 24 are those suggested by the Examiner to address minor clerical errors. No new matter has been added.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 102 AND § 103

- I. Claims 12 and 20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Essenpreis et al. (USPN 5,770,454), for the reasons substantially of record.
- II. Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Essenpreis et al., as applied to claim 20, in view of Parker (USPN 5,553,613), and further in view of Caro (USPN 5,348,003), for the reasons substantially of record.
- III. Claims 6 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Essenpreis et al., as applied to claim 20, in view of Caro, for the reasons substantially of record.
- IV. Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Essenpreis et al. in view of Caro, as applied to claim 6, and further in view of Robinson (USPN 5,830,132), for the reasons substantially of record.

V. Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Essenpreis et al., as applied to claim 20, in view of Robinson, for the reasons substantially of record.

VI. Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Essenpreis et al., as applied to claim 20, in view of Robinson, and further in view of Anderson et al. (USPN 5,879,294), for the reasons substantially of record.

VII. Each of claims 4-10 and 12 depend directly or indirectly from independent claim 20. The Examiner advises that claims 3 and 21-26 are allowable, and that claim 2, depending from claim 20, and claim 11, depending from claim 10, would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. The Examiner notes also in the Advisory Action that the addition to claim 20 of an additional structural limitation that leads to “a result” of “canceling the influence of skin” would overcome the rejection of claim 20 under 35 U.S.C. § 102(b) as being anticipated by Essenpreis et al. The Examiner suggests the limitation such as:

a calculator for calculating a bilirubin concentration based on the first to fourth electric signals that includes a processing unit that cancels the influence of skin by using the luminous fluxes of the different optical path length.

Applicant wishes to note that the expression “a processing unit” is not recited in the present specification. In this regard, it is Applicant’s view that the Examiner requests adding a certain wording defining a structure and that the term “a processing unit” is merely an example

09/536,762

of such a wording. Accordingly, Applicant believes that reciting "a processor" in place of "a processing unit" is more appropriate.

To expedite prosecution, claim 20 is amended to recite:

(g) a calculator for calculating a bilirubin concentration based on the first to fourth electric signals that includes a processor that cancels the influence of skin by using the luminous fluxes of the different optical path length.

Consequently, it is believed that independent claim 20, as well as claims 4-10 and 12 depending from independent claim 20, as amended, are allowable.

CONCLUSION

Accordingly, it is urged that the application, as now amended, overcomes the rejection of record and is in condition for allowance. Entry of the amendment and favorable reconsideration of this application, as amended, are respectfully requested. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, Examiner is requested to call Applicants' attorney at the telephone number shown below.

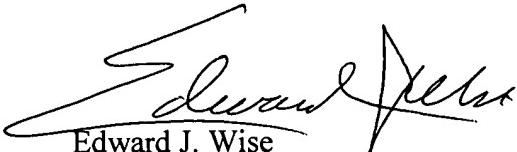
To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

09/536,762

including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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